

## **Section 17.4 Conditional Rezoning**

**A. Intent.** It is recognized that there are certain instances where it would be in the best interests of the Township, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by a property owner as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of the Michigan Zoning Enabling Act by which a landowner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

**B. Application and Offer of Conditions.**

1. An owner of land may voluntarily offer in writing one or more conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
2. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
3. The landowner's offer of conditions may not purport to authorize uses, activities, buildings, structures, items, or developments not allowed in the requested new zoning district or otherwise by this Ordinance.
4. Any use or development proposed as part of an offer of conditions for a rezoning that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use or development is ultimately also approved by the Township in accordance with the provisions of this Ordinance.
5. Any use or development proposed as part of an offer of conditions for a rezoning that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is ultimately also approved by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
6. Any use or development proposed as part of an offer of conditions for a rezoning that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately also approved in accordance with the provisions of this Ordinance.
7. The offer of conditions may be changed during the process of rezoning consideration provided that any changed or additional conditions are entered or agreed to voluntarily by the landowner. A landowner may withdraw all or part of its offer of conditions at any time prior to final rezoning action by the Township Board, provided that if such withdrawal or change occurs after the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred back to the Planning Commission for a new public hearing with appropriate notice and a new recommendation by the Planning Commission.

**C. Planning Commission Review.** The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in this Article, may recommend to the Township Board approval, approval with recommended changes or denial of the rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the landowner.

**D. Township Board Review.** After receipt of the Planning Commission's recommendation, the Township Board shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The Township Board's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in this Article. Should the Township Board consider changes to the proposed conditional rezoning advisable and if such contemplated changes to the offer of conditions are acceptable to and thereafter offered by the landowner, then the Township Board may refer such changes back to the Planning Commission for a report thereon by the Planning Commission within a time specified by the Township Board and the Township Board may proceed thereafter in accordance with the Zoning Act to deny or approve the conditional rezoning with or without changes.

#### **E. Approval.**

1. If the Township Board approves the rezoning request with conditions from the offer of conditions, the offered conditions shall be incorporated into a formal written Statement of Conditions, or similar document, acceptable to the landowner and the Township and which document also conforms in form to the provisions of this Section. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance/ordinance amendment adopted by the Township Board to accomplish the requested rezoning.
2. The Statement of Conditions shall:
  - a. Be in a form recordable with the County Register of Deeds or, in the alternative and if acceptable to the Township, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the landowner giving notice of the Statement of Conditions in a manner acceptable to the Township Board.
  - b. Contain a legal description of the land to which it pertains.
  - c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon both the current landowner and all successor owners, creditors, etc., of the land.
  - d. Incorporate by attachment or reference any diagram, plans or other documents that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.
  - e. Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the Township with the County Register of Deeds.
  - f. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions and have full authority to so bind the land.
3. Upon the rezoning taking effect, the Township's Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The Township Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.
4. The approved Statement of Conditions (or an Affidavit or Memorandum giving notice thereof if such alternative is approved by the Township) shall be filed by the Township with the County Register of Deeds. The Township Board shall have the authority to waive this requirement at its discretion if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the Township or to any subsequent purchaser or owner of the land.
5. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use, buildings, structures, and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

#### **F. Compliance with Conditions.**

1. Any person who establishes a development or commences or continues a use upon land that has been rezoned with conditions shall continuously operate and maintain the development, land, buildings, structures, and use in full compliance with all of the conditions set forth in the Statement of Conditions as well as this Ordinance. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Ordinance and shall be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
2. No permit or approval shall be granted under this Ordinance or any other ordinance of the Township for any use, building, structure, or development that is contrary to an applicable Statement of Conditions.

**G. Time Period for Establishing Development or Use.** Unless another time period is specified in the ordinance/ordinance amendment rezoning the subject land, the approved development and/or use of the land must be substantially commenced upon the land within one year after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the Township Board if (1) it is demonstrated to the Township Board's reasonable satisfaction that there is

a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and, (2) the Township Board finds that there has not been a change in circumstances that would render the current zoning with its Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise be inconsistent with sound zoning policy.

**H .Reversion of Zoning.** If the approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection G above, then the land shall revert to its former zoning classification as set forth in MCL 125.3405, as amended. The reversion process shall be initiated by the Township Board requesting that the Planning Commission proceed with consideration of rezoning of the land back to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests. Such reversion shall also occur if any condition or requirement in the Statement of Conditions is violated.

**I. Subsequent Rezoning of Land.** When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Subsection H above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect, unless the Township Board deems certain conditions still relevant and binding, in which case any such conditions shall remain effective. Upon the landowner's written request, the Township Clerk shall record with the County Register of Deeds a notice that the prior Statement of Conditions, or portions thereof, is no longer in effect if, in fact, that is the case.

**J. Amendment of Conditions.**

1. During the time period for commencement of an approved development or use specified pursuant to subsection G above or during any extension thereof granted by the Township Board, the Township shall not add to or alter the conditions in the Statement of Conditions.
2. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

**K .Township Right to Rezone.** Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed or construed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification at any time. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act.

**L. Failure to Offer Conditions.** The Township shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect a landowner's rights under this Ordinance.